IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1134 OF 2003

Shri Ravindra Parashuram Chavan .. ..Petitioner

Versus

The Secretary
Mahatma Gandhi Mission Hospital,
CBD Belapur, Navi Mumbai & Ors. ..Respondents

Mr.M.S.Lagu for petitioner
Mr.H.G.Wakshe h/f P.A.Pol for respondent nos.1 & 2

CORAM : P.V.KAKADE, J.

DATE : 17TH MARCH, 2006.

P.C.:

1. Heard the learned counsel for both the parties.

2. In view of the facts and circumstances, Rule, rule is made returnable forthwith.

3. The petitioner has impugned the order passed by Presiding Officer, School Tribunal, New Bombay dated 18th October, 2001 rejecting the application for

condonation of delay in preferring the appeal. While filing the appeal a separate application for condonation of delay was filed which was adjudicated and it was held that there was no sufficient ground for condoning the delay of about 6 months and as such the application came to be rejected and hence the petition.

4. The Petitioner is a trained Graduate teacher working with the Respondent School with effect from 1.7.1995 and he was working in that capacity in the year 1997. On 11.7.1997 the respondent refused the petitioner to continue to work as Asstt. Teacher even though during the tenure of his service there was no adverse remark against the petitioner. It is the case sought to be made out by the petitioner that respondent kept on giving assurance to the petitioner that he would be reinstated in service soon. However, he was never allowed to work with them and therefore, the petitioner filed appeal before the Tribunal being Appeal No.229 of 1998, inter alia, challenging the oral termination of the petitioner. The delay condonation application was also filed therewith.

. The School Tribunal after hearing both the

parties came to the conclusion that the appeal deserves to be allowed and by order dated 21.8.1998 directed the respondents to restore the services of the petitioner with effect from 1.9.1998. The Respondent preferred Writ Petition No.1928 of 1999, inter alia, challenging the judgment and order dated 21.8.1998 passed by the School Tribunal in Appeal No.229 of 1998. This Court thought it fit to remand the matter back to the School Tribunal with directions that the issue of condonation of delay should also to be considered by the Tribunal. Accordingly, the issue was adjudicated after hearing both the parties and application came to be rejected and hence the petitioner preferred this Petition against the said order of rejection of delay condonation application on the ground that there was no sufficient cause disclosed by the Petitioner.

5. After hearing both the parties and perusing the reasoning adopted by the lower court I am satisfied that the petitioner sought to put reliance on the case of **Collector, Land Acquisition, Anantnag and Anr. vs. Mst. Katiji and Ors. reported in A.I.R. 1987 SC 1353**, but the Tribunal failed to appreciate the ratio laid down by the Apex Court in the said ruling.

It may also be noted that the said ruling was followed by this Court. The learned Single Judge in the case of **Nilesh Vijay Deshmukh and Anr. vs. Mathurabai Bhikanrao Deshmukh and Ors. reported in 2005(4) Mh.L.J. 481** has followed the said ratio. The Apex Court has observed thus -

> "The legislature has conferred the power to condone delay by enacting section 5 of the Indian Limitation Act, 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day’s delay must be explained", does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted

against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by reasoning to delay. In fact, he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

Therefore, if we perused the ratio laid down by the Apex Court, as noted earlier, vis-a-vis the facts involved in the present case, there cannot be doubt that the lower court has not properly appreciated the factual aspects

from the record while coming to the conclusion that there was no sufficient cause given by the petitioner to explain the delay satisfactorily. It is also to be noted that it is always preferable that the persons like the petitioner should be given all possible opportunities to seek redressal of grievance especially when facts and situations involved in the dispute revolves around alleged illegal termination of the service of the petitioner, therefore it is always better to have effective adjudication and no pedantic approach should be made by the Court of law in such matter.

6. Under the circumstances, I am inclined to grant petition of the petitioner with certain directions, hence, Rule is made absolute. The Petition is allowed in terms of prayer clause (a). The Tribunal is directed to register the appeal and adjudicate the same expeditiously so as to complete the adjudication after hearing both the parties within a period of four months from the date of this order. With this direction the petition stands disposed of with no order as to costs.